

STATEMENT OF ROBERT STURGELL, DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION, BEFORE THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT, ON CONTROLLING RESTRICTED AIRSPACE; AN EXAMINATION OF MANAGEMENT AND COORDINATION OF AIR DEFENSE

JULY 21, 2005

Chairman Davis, Congressman Waxman, Members of the Committee:

My name is Robert Sturgell, Deputy Administrator of the Federal Aviation Administration (FAA), and I'm pleased to appear before you today to discuss how air traffic is controlled in restricted airspace and how the government manages and coordinates air defense. FAA has always worked to ensure that our nation's airspace is managed efficiently, effectively, and, most importantly, safely. Prior to September 11th, FAA's air traffic management focused primarily on improving communications with users of the national airspace system (NAS) to manage the dynamic weather, traffic, and airport capacity issues that arose to maximize capacity and efficiency without compromising safety. Since September 11th, the FAA has redoubled our efforts to improve communications with our counterpart agencies to ensure that we can respond to the dynamic security issues that may arise at any time.

As security has become a greater focus of managing air traffic, and responsibility for security has been concentrated in the Department of Homeland Security, it is appropriate that a clarification of who controls the airspace, under what circumstances and why should be reviewed and explained. The FAA was created in 1958 to provide a centralized focus for aviation, replacing an ineffective system of diffused authorities that had evolved over time. Prior to 1958, the functions of the FAA were splintered – the

Civil Aeronautics Authority under the Department of Commerce possessed day-to-day air traffic control responsibilities; the Civil Aeronautics Board possessed accident investigation and safety regulatory responsibilities; and an Airways Modernization Board had responsibility for planning and developing a system of air navigation facilities; and an interagency Air Coordinating Committee had, until shortly before, reviewed all matters involving the use of airspace. It was clear that this approach to managing the national airspace was inefficient and ineffectual.

The legislative history of the Federal Aviation Act of 1958 (FAAct) makes clear that Congress wanted one independent agency with “plenary authority” over the nation’s airspace. Legislative history notes that the bill to create the FAA is intended to address two fundamental deficiencies in the Federal Government’s aviation responsibilities, one of which was a “lack of clear statutory authority for centralized airspace management.” The report stated that, “the bill proposes to vest in a single Administrator plenary authority for airspace management. If such authority is once again fractionalized and made subject to committee or panel decision, the evil will be continued.” The “evil” that the report alludes to included the problems that developed before 1958 when it was not clear who, *i.e.*, a particular civilian agency or the military, had the sole authority over air traffic, airspace and other aviation safety issues. These problems led to aviation accidents, including midair collisions.

Although Congress passed various statutory amendments, including those relating to the Homeland Security Act of 2002 and the Aviation and Transportation Security Act of

2001, during and after the formation of the Department of Homeland Defense and the Transportation Security Administration (TSA), it did not alter the FAA's status. The current statutory framework for the Administrator's airspace authority and the accompanying legislative history confirm that the FAA continues to be the sole authority for airspace management, air traffic regulatory authority, and use of airspace.

Even in circumstances that potentially affect the national defense, whereby the Secretary of Defense has an interest in articulating the views of the military, it is the Administrator – in consultation with the Secretary of Defense – who decides to establish areas in the airspace that are necessary for national defense. Section 40107(b) of title 49, United States Code, provides that in the event of war, the President may transfer to the Secretary of Defense (by executive order) a duty, power, activity, or facility of the FAA. Executive Order 1161, dated July 7, 1964, directs the Secretary of Defense and the Secretary of Transportation to prepare and develop plans, procedures, policies, programs and courses of action in anticipation of the probable transfer of the FAA to the DOD in the event of war. Furthermore, both Departments are instructed that consistent with the above and in the event of war, these provisions are to be accomplished smoothly and rapidly. To that end, the FAA and the DOD entered into several MOUs setting forth agreements on certain procedures and policies for military exercises and missions. FAA and various parts of the military entered into subsequent MOUs to address a variety of air traffic control issues to accommodate military training operations and military missions. Unlike the statutory provision of § 40107(b), which explicitly provide for the transfer of a duty, power, activity or facility of the FAA to the military in the event of war, no such

provision exists in regard to the transfer of any duty, power, activity or facility from the FAA to any other agency or entity.

With respect to airspace security, the Transportation Security Administration (TSA) works closely with, consults and coordinates with FAA as appropriate, but it has no authority to circumvent FAA's operational control. It is vital that FAA defer to TSA's security expertise in order to facilitate executing security enhancing aviation procedures as necessary. It is equally important that TSA defer to FAA's operational and safety expertise in order to provide to TSA the required support in the manner that is safest for all operators in the NAS. Section 114(g) of title 49, United States Code, clearly underscores that TSA's security role does not preempt or supersede the FAA's own safety and security authority.

It is important to acknowledge and preserve the respective roles and expertise among the DoD, TSA, and FAA. It is equally important that we coordinate our actions and activities together to provide maximum effectiveness.

Recognizing the need to delineate clear lines of authority and responsibility and establish open communication, the FAA and various other agencies have entered into a number of agreements and/or memoranda of understanding. By establishing cooperative interagency relationships that emphasize organizational capabilities, we are improving service to and relationships with each other, other Federal, State, and local agencies, non-governmental stakeholders, and the American public and Tribal Nations. These

agreements define strategic relationships with an aim towards identifying and leveraging respective core competencies, capabilities, resources, and authorities to enhance the safety and security of aviation and commercial space transportation in the United States; to promote efficiency of government and reduce overall costs; to minimize the adverse economic and regulatory impact of measures required of the public and regulated entities; and to achieve national performance security goals for the National Airspace System.

The greatest evidence of the open sharing of information and joint decision making efforts amongst the various agencies as it relates to aviation is the operation of the “DEN,” the Domestic Events Network. The DEN is a 24/7 operational center that links the Transportation Security Administration, United States Secret Service, Federal Marshall Service and other components of the Department of Homeland Security, Department of Defense, North American Air Defense Command, U.S. Park Police, U.S. Capitol Police, local law enforcement agencies, and others as needed. It is set up to respond to emergency situations quickly – in real time. It is set up so that operational personnel and political appointees in many agencies can be tied together quickly to share information and rapidly decide on a course of action.

While the DEN monitors events nationwide, the majority of restricted airspace violations occur in and around the Washington, D.C. area. Although there is restricted airspace throughout the country depending on events that are occurring, nowhere is the airspace more regulated on an ongoing basis than here in Washington. Unidentified aircraft operating in restricted airspace are taken very seriously. FAA is a member of the

National Capital Region Coordination Center (NCRCC), a group comprised of representatives of security and military agencies to ensure that, in the event of a threat from an unidentified aircraft, coordinated action can be taken to appropriately address the threat and keep the region safe.

An analysis of what happened on May 11, 2005 will serve as a good example of how FAA interacts with other agencies when an unidentified aircraft approaches Washington, D.C. At 11:28 a.m., FAA and the NCRCC became aware of an aircraft entering restricted airspace from the northeast, approximately 44 miles from Ronald Reagan Washington National Airport (DCA). The FAA's watch officer for key communications working with the DEN, contacted the Potomac Consolidated Terminal Radar Approach Control (Potomac TRACON), which confirmed to participating NCRCC agencies that the aircraft was not in communication with air traffic control, had not filed a flight plan and that its transponder was transmitting a generic, rather than a unique code, which essentially meant that FAA did not know who the aircraft was. At this point, the aircraft was considered to be a track of interest (TOI). Because the aircraft was flying just within and parallel to the northern boundary of the restricted zone, it was not considered an immediate threat and, while it was monitored closely, no intercept action was taken at this point.

The aircraft subsequently turned southbound toward the Flight Restricted Zone (FRZ), the second restricted zone surrounding the Capitol. This information was communicated on the DEN to the participating NCRCC agencies. At this point, the Customs and Border

Protection Office of Marine Operations (AMO) ordered the launch of its Blackhawk helicopter and Citation jet aircraft from DCA. In addition, two F-16 aircraft were scrambled from Andrews Air Force Base. The AMO Blackhawk initially intercepted the aircraft about 10 miles north of the Capitol. When the aircraft continued to proceed south toward the Capitol, the F-16s moved in to intercept. The aircraft was visually identified as a high-winged, single-engine Cessna-type aircraft.

Attempts by the Blackhawk helicopter to signal to the pilots of the Cessna and get them to communicate on an emergency frequency were initially unsuccessful. At noon, the Department of Defense authorized the F-16 pilots to use flares. The flares were dispensed when the aircraft was 6.7 miles from DCA. At this time, the Secret Service and the U.S. Capitol Police made the decision to evacuate the White House and the Capitol, respectively. The Blackhawk continued to signal to the pilots to get them to communicate with them. Ultimately, the Cessna pilots were able to make contact with the AMO Citation on an emergency frequency and the Cessna turned west. The Cessna proceeded through the prohibited airspace over the Naval Observatory with the F-16s in escort. As the aircraft exited the FRZ, the Blackhawk joined the escort north.

The Potomac TRACON reported on the DEN that the pilots were in communication with air traffic controllers at 12:22 p.m. The pilots reported to the controllers that they had been instructed to proceed to the airport in Frederick, Maryland. Escorted by the Blackhawk and the F-16s, the aircraft exited restricted airspace at 12:25 p.m. and landed in Frederick at 12:39 p.m. During the flight, Potomac TRACON controllers

communicated with the pilots several times to tell them how far they were from the airport and to warn them to look for other VFR traffic. Upon landing, the occupants of the aircraft were taken into custody by the FBI, Secret Service, and Maryland state authorities for questioning.

In this instance, we consider the interaction of the agencies to have worked as intended. The communication and interface that took place during this incident were an improvement over the interagency communication that took place during the incident last June involving the Governor of Kentucky's plane which, on approach to DCA, was known to FAA controllers, but appeared as an unidentified aircraft to the other members of the NCRCC. By contrast, on May 11th, the decision to evacuate the Capitol and the White House was made by the U.S. Capitol Police and the Secret Service based on the accurate information that an unknown aircraft operator had penetrated restricted airspace and the FRZ, was heading toward the Capitol, and was not immediately responding to the intercept. Once the aircraft changed direction away from the areas of concern, an all clear was announced. All agencies in the NCRCC learned from the June 2004 event and, as a result, today, both FAA controllers and NCRCC members are seeing and acting on the same information.

It is always appropriate for the Federal Government to review incidents, such as the one that occurred on May 11th in order to determine if improvements in how these incursions are handled can be made. Toward this end, I am aware that the Government Accountability Office (GAO) has prepared a report at the request of Chairman Davis on

the management improvements that are needed throughout government to address violations of restricted airspace. As I've noted, FAA takes these incursions very seriously. We will continue to work with GAO, other federal agencies and Congress to improve airspace security through better coordination, clarification of information and definitions, and development of protocols to share our available information (including data on violations) with eligible recipients.

Finally, I think it is important to note that, although we must continue to be vigilant with respect to these incursions, to date, the overwhelming majority of incursions into restricted airspace around in the Washington, D.C. area were made inadvertently. Of the restricted airspace violations made since September 11th, there was only one instance in which the pilot was found to have penetrated the restricted area intentionally. This violation resulted in the FAA revoking the pilot's certificate. The combination of better pilot education, dissemination of information on airspace restrictions, and enforcement against violators is having an impact on the number of violations taking place. We are open to any recommendations GAO makes to further improve the security of flight restricted zones.

Mr. Chairman, this completes my statement. I will be happy to answer your questions at this time.